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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/698,173	10/30/2003	Howard Shelton Lambert	GB920020092US1	2503

7590 09/27/2006  
IBM Corporation  
IP Law Department  
11400 Burnet Road  
Austin, TX 78758

EXAMINER

MASKULINSKI, MICHAEL C

ART UNIT PAPER NUMBER

2113

DATE MAILED: 09/27/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/698,173

Applicant(s)

LAMBERT ET AL.

Examiner

Michael C. Maskulinski

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 30 October 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-23 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-23 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 30 October 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_.

**Non-Final Office Action**

***Claim Rejections - 35 USC § 101***

1. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

2. Claim 23 is rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. Claim 23 claims a recording medium on which a program is stored and variations thereof. These claims therefore are interpreted as recording a program per se. In order to overcome this rejection, language, specifically stating the claim, must be limited to a computer program stored on a computer recordable medium executing on a computer.

***Claim Rejections - 35 USC § 112***

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter, which the applicant regards as his invention.

4. Claims 11 and 22 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

5. Where applicant acts as his or her own lexicographer to specifically define a term of a claim contrary to its ordinary meaning, the written description must clearly redefine the claim term and set forth the uncommon definition so as to put one reasonably skilled in the art on notice that the applicant intended to so redefine that claim term. *Process*

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*Control Corp. v. HydReclaim Corp.*, 190 F.3d 1350, 1357, 52 USPQ2d 1029, 1033 (Fed. Cir. 1999). The term “pervasive device” in claims 11 and 22 is used by the claim to mean “a PDA, cell phone, or other mobile/portable devices”, while the accepted meaning is “a device that spreads throughout or permeates.” The term is indefinite because the specification does not clearly redefine the term. The Examiner is unsure as to how the devices in the specification are pervasive.

### ***Claim Objections***

6. Claim 7 is objected to because of the following informalities: claim 7 claims “A system as claimed in claim 7”. A claim cannot depend upon itself. For purposes of examination, the Examiner has interpreted claim 7 as being dependent upon claim 6. Appropriate correction is required.

7. Claims 8 and 19 are objected to because of the following informalities: claims 8 and 19 claim 8 “means for initialising the parameter, wherein upon initialisation”. This should be changed to “means for initializing the parameter, wherein upon initialization”. Appropriate correction is required.

### ***Claim Rejections - 35 USC § 102***

8. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

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(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

9. Claims 1-3, 5-14, and 16-23 are rejected under 35 U.S.C. 102(b) as being anticipated by Havekost et al., US 2002/0108077 A1.

Referring to claims 1, 12, and 23:

- a. In paragraph 0047, Havekost et al. disclose that modules may include respective logic that monitors the operational status of equipment controlled by each module, the values of process variables compared to a predetermined operating range (e.g., a setpoint or control range), or any other failure information desired (wherein the at least one parameter comprises at least three values corresponding to a minimum value and a maximum value together representing a range and a variable value).
- b. A data structure comprising data associated with the at least one parameter would be inherent to the system of Havekost et al. since the variable and operating ranges have to be stored in the control logic.
- c. In paragraph 0047, Havekost et al. disclose that each phase may, on a step by step basis, process failure information associated with the module or modules that carry out that step to determine if the step can proceed (means for accessing the data structure, means for monitoring the variable value, and means, responsive to the variable value lying within the range, for managing the at least one parameter).

d. With respect to claim 23, in paragraph 0058, Havekost et al. disclose implementing the invention in software.

Referring to claims 2 and 13, in paragraph 0047, Havekost et al. disclose monitoring the operational status of equipment (wherein the at least one parameter represents a resource associated with the system).

Referring to claims 3 and 14, in paragraph 0048, Havekost et al. disclose that failure information includes that a control parameter has fallen outside of a predetermined range of values (responsive to the variable value lying outside the range, for invoking an action).

Referring to claims 5 and 16, in paragraph 0048, Havekost et al. disclose that the list of failure information may include process control variables. Since process control variables change in the system, it would be inherent. A system as claimed in claim 1, further comprising means for updating the data structure with the data, when the first component is launched.

Referring to claims 6 and 17, in paragraph 0056, Havekost et al. disclose that the batch executive function could alternatively perform some or all of the failure management activities. Alternatively or additionally, some or all of the failure management activities could be performed by one or more software routines running within the server (wherein a second component comprises the means for accessing, the means for monitoring and the means for managing).

Referring to claims 7 and 18, in paragraph 0048, Havekost et al. disclose that each of the control modules can automatically pass information such as requested

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failure information to the unit phases (means for notifying the second component of events associated with the first component).

Referring to claims 8 and 19, in paragraph 0040, Havekost et al. disclose implementing the invention in software. In order for variables and parameters to be executed by software they have to be instantiated and initialized to some value. Therefore, means for initializing the parameter, wherein upon initialization, the variable value represents an initial value is inherent to the system of Havekost et al.

Referring to claims 9 and 20, in paragraph 0043, Havekost et al. disclose performing a process only when control parameters are within a desired range therefore, when the first component is launched, the variable value represents a current value.

Referring to claims 10 and 21, in paragraph 0043, Havekost et al. disclose that failure of control parameters to fall within an acceptable range may result in damage to the equipment or product making it a critical component.

Referring to claims 11 and 22, in paragraph 0003, Havekost et al. disclose a cellular communication link attached to the system (means for engaging with a pervasive device).

10. Claims 1-5, 8-10, 12-15, 19-20, and 23 are rejected under 35 U.S.C. 102(e) as being anticipated by Sauvage et al., US 2003/0056156 A1.

Referring to claims 1, 12, and 23:

a. In paragraph 0009, Sauvage et al. disclose procuring a range of expected values of a time-dependent variable of the system, the range having upper and

lower limits relating to expected operating parameters of the system (wherein the at least one parameter comprises at least three values corresponding to a minimum value and a maximum value together representing a range). In paragraph 0010, Sauvage et al. disclose procuring an actual value of the system's time dependent variable (and a variable value)

b. In paragraph 0011, Sauvage et al. disclose comparing the actual value with the expected range (accessing the data structure, monitoring the variable value).

c. In paragraph 0021, Sauvage et al. disclose that an advisory signal is generated in the event that the actual value falls outside the expected range, whereby appropriate remedial action is taken (and in response to the variable value lying within the range, managing the at least one parameter).

Referring to claims 2 and 13, in paragraph 0054, Sauvage et al. disclose monitoring a processor or memory (wherein the at least one parameter represents a resource associated with the system).

Referring to claims 3 and 14, in paragraph 0021, Sauvage et al. disclose that an advisory signal is generated in the event that the actual value falls outside the expected range, whereby appropriate remedial action is taken (the step of invoking, in response to the variable value lying outside the range, an action).

Referring to claims 4 and 15, in paragraph 0039, Sauvage et al. disclose that the remedial action may involve at least one of a system restart, a system switchover and



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an expected range override (wherein the action comprises a re-launch of the first component).

Referring to claims 5 and 16, in paragraph 0020, Sauvage et al. disclose monitoring the current activity of the system, therefore, the data is updated initially and at every stage of the system (the step of updating the data structure with the data, when the first component is launched).

Referring to claims 8 and 19, in paragraph 0020, Sauvage et al. disclose monitoring the current activity of the system, therefore, the data is updated initially and at every stage of the system (the step of initialising the parameter, wherein upon initialisation, the variable value represents an initial value).

Referring to claims 9 and 20, in paragraph 0020, Sauvage et al. disclose monitoring the current activity of the system (when the first component is launched, the variable value represents a current value).

### ***Conclusion***

11. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The cited prior art is related to monitoring of system variables.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael C. Maskulinski whose telephone number is (571) 272-3649. The examiner can normally be reached on Monday-Friday 9:30-6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert W. Beausoliel can be reached on (571) 272-3645. The fax phone

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number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Michael C Maskulinski  
Examiner  
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